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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Electric Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Owned Generation Fuel Procurement, Diablo Canyon Seismic Studies Balancing Account, and Other Activities for the Period January 1 through December 31, 2015 (U39E).

Application 16-02-019  
(Filed February 29, 2016)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

**Summary**

This Scoping Memo and Ruling (Scoping Memo) sets forth the category, issues, need for hearing, schedule and other matters necessary to scope this proceeding pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.<sup>1</sup>

**1. Background**

On February 29, 2016, Pacific Gas and Electric Company (PG&E) filed an application requesting the Commission to approve its *Compliance Review of Utility Owned Generation Operations, Electric Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Owned*

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<sup>1</sup> California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

*Generation Fuel Procurement, Diablo Canyon Seismic Studies Balancing Account, and Other Activities for the Period January 1 through December 31, 2015 (Application).*

On March 17, 2016, Resolution ALJ 176-3374 preliminarily determined that this proceeding is ratesetting and that hearings are necessary. On April 4, 2016 and April 6, 2016, protests were filed by the Office of Ratepayer Advocates (ORA) and the Alliance for Nuclear Responsibility (Alliance), respectively. PG&E replied to the protests on April 15, 2016.

On May 9, 2016, the assigned Administrative Law Judge issued a Ruling noticing a prehearing conference. The prehearing conference took place in San Francisco on June 1, 2016 for the purpose of establishing the service list for the proceeding, discussing the scope of the proceeding, and developing a procedural timetable for the management of the proceeding.

## **2. Scope of Issues**

Based on the Application, parties' protests, PG&E's responses, and the discussion at the prehearing conference, the following issues are within the scope of this proceeding:

- Whether PG&E administered and managed its utility owned generation in a prudent manner;
- Whether PG&E managed utility owned generation outages and associated fuel costs in a prudent manner;
- Whether PG&E administered and managed its qualifying facility and non-qualifying facility contracts in accordance with the contract provisions in a prudent manner;
- Whether the contract amendments proposed by PG&E are reasonable and whether the associated costs should be recovered through the Electric Energy Resource Recovery Account (ERRA) account;
- Whether PG&E achieved least-cost dispatch of its energy resources;

- Whether PG&E's entries in the ERRA for 2015 are reasonable;
- Whether the costs incurred and recorded in the Diablo Canyon Balancing Account, including costs for the long term seismic plan, are reasonable;
- Whether PG&E met its burden of proof regarding its claim for cost recovery;
- Whether the costs incurred and recorded in the Green Tariff Memorandum Account in 2015 are reasonable; and
- Whether PG&E's Greenhouse Gas Compliance Instrument procurement comply with the 2010 and 2014 bundled procurement plans.

During the prehearing conference, ORA requested that the Commission consider three sub-issues related to the final bulleted issue above regarding greenhouse gas compliance: 1) whether PG&E met its burden of proof regarding greenhouse gas costs listed in chapter 12 of the testimony; 2) whether PG&E is seeking recovery for indirect greenhouse gas costs from third-parties providing power; and 3) whether PG&E met its burden with regards to the indirect costs.

PG&E argues that these three sub-issues do not belong in a compliance program pursuant to the description of a compliance review as provided in the recent San Diego Gas and Electric Company ERRA compliance proceeding.<sup>2</sup> D.15-06-002 describes a compliance review as the consideration of whether a utility has complied with all applicable rules, regulations, opinions, and laws whereas a reasonableness review evaluates the compliance but also whether data

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<sup>2</sup> June 1, 2016 Prehearing Conference Transcript at 11-12.

or actions resulting from, for example, the calculation of a forecasted expense, are reasonable, based on the methods and inputs used.<sup>3</sup>

PG&E concludes that the previously listed issue, “whether PG&E’s Greenhouse Gas Compliance Instrument procurement complies with the 2010 and 2014 bundled procurement plans” should be the issue that the Commission addresses and the reasonableness of the costs should not be included.<sup>4</sup> However, ORA asserts that a compliance review should include whether the utility operated and managed their programs in the most cost-effective way.<sup>5</sup>

The scope of this proceeding shall include the three sub-issues recommended by ORA:

- Whether PG&E met its burden of proof regarding greenhouse gas costs listed in chapter 12 of the PG&E testimony;
- Whether PG&E is seeking recovery for indirect greenhouse gas costs from third parties providing power; and
- Whether PG&E met its burden with regards to the indirect costs.

It is essential that a compliance review include a determination of whether the utility operated and managed their programs in the most cost-effective manner. To be clear, the question of whether PG&E’s Greenhouse Gas Compliance Instrument procurement complies with the 2010 and 2014 bundled procurement plans shall also include purchases and sales conducted (and recorded costs incurred) during the relevant record period.

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<sup>3</sup> D.15-06-002 at 3.

<sup>4</sup> Transcript at 12.

<sup>5</sup> Transcript at 12-13.

### **3. Categorization**

The Commission in Resolution ALJ 176-3374, issued on March 17, 2016, preliminarily determined that the category of the proceeding is ratesetting.

This Scoping Memo confirms the categorization. Anyone who disagrees with this categorization must file an appeal of the categorization no later than ten days after the date of this scoping ruling. (*See* Rule 7.6.)

### **4. Need for Hearing**

The Commission in Resolution ALJ 176-3374 also preliminarily determined that hearings are required. In its Application, PG&E stated that hearings may be required depending upon the nature of the protests; both ORA and the Alliance requested hearings. An evidentiary hearing will be scheduled.

### **5. Ex Parte Communications**

In a ratesetting proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the Administrative Law Judge are only permitted as described at Public Utilities Code Section 1701.3(c) and Article 8 of the Rules.

### **6. Intervenor Compensation**

Pursuant to Public Utilities Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by July 1, 2016, thirty days after the prehearing conference.

### **7. Presiding Officer**

Michel Peter Florio is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge. Pursuant to Public Utilities Code Section 1701.3 and Rule 13.2 of the Commission's Rules of Practice and Procedure, Judge Hymes is designated as the Presiding Officer.

## **8. Filing, Service and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the Administrative Law Judge. Persons may request to become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, the document format must be consistent with the requirements set forth in Rules 1.5 and 1.6. Additionally, Rule 1.10 requires service on the Administrative Law Judge of both an electronic and a paper copy of filed or served documents.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission's Docket Office at [www.cpuc.ca.gov/PUC/efiling](http://www.cpuc.ca.gov/PUC/efiling). All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

Discovery may be conducted by the parties consistent with Article 10 of the Commission's Rules. Any party issuing or responding to a discovery request shall serve a copy of the request or response simultaneously on all parties. Electronic service under Rule 1.10 is sufficient, except Rule 1.10(e) does not apply to the service of discovery and discovery shall not be served on the Administrative Law Judge. Deadlines for responses may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

## **9. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **10. Schedule**

The parties proposed similar schedules. The adopted schedule is as follows:

<b>Event</b>	<b>Date</b>
Prehearing Conference	6/1/2016
Scoping Memo Issued	6/17/2016
ORA Report and Intervenor Testimony Served	7/29/2016
Rebuttal Testimony Served	9/16/2016
Evidentiary Hearing	10/19-20/2016 - 9:30 a.m. Commission Courtroom 505 Van Ness Avenue San Francisco, CA 94102

Concurrent Opening Briefs Filed	11/8/2016
Concurrent Reply Briefs Filed	11/22/2016

The proceeding will be submitted upon the filing of reply briefs, unless the assigned Commissioner or Administrative Law Judge directs further evidence or argument.

The assigned Commissioner or assigned Administrative Law Judge may modify this schedule as necessary to promote the efficient management and fair resolution of this proceeding.

It is the Commission's intent to complete this proceeding within 18 months of the date this Scoping Memo is filed. This deadline may be extended by order of the Commission. (Public Utilities Code Section 1701.5(a).)

If there are any workshops held in this proceeding, notices of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

## **11. Settlement and Alternative Dispute Resolution**

While the schedule does not include specific dates for settlement conferences, it does not preclude parties from meeting at other times provided notice is given consistent with our Rules.

The Commission offers Alternative Dispute Resolution (ADR) services consisting of mediation, facilitation, or early neutral evaluation. Use of ADR services is voluntary, confidential, and at no cost to the parties. Trained Administrative Law Judges serve as neutrals. The parties are encouraged to visit the Commission's ADR webpage at <http://www.cpuc.ca.gov/adr>, for more information.



If requested, the assigned Administrative Law Judge will refer this proceeding, or a portion of it, to the Commission's ADR Coordinator. Alternatively, the parties may contact the ADR Coordinator directly at [adr\\_program@cpuc.ca.gov](mailto:adr_program@cpuc.ca.gov). The parties will be notified as soon as a neutral has been assigned; thereafter, the neutral will contact the parties to make pertinent scheduling and process arrangements. Alternatively, and at their own expense, the parties may agree to use outside ADR services.

## **12. Final Oral Argument**

A party in a ratesetting proceeding in which a hearing is held has the right to make a Final Oral Argument before the Commission, if the argument is requested within the Closing Brief. (Rule 13.13.)

### **IT IS RULED that:**

1. The category of this proceeding is ratesetting. Appeals regarding the categorization, if any, must be filed and served within ten days from the issuance of this Scoping Memo.
2. Administrative Law Judge Kelly A. Hymes is designated as the Presiding Officer.
3. The scope of the issues for this proceeding is as identified in "Section 2. Scope" of this Scoping Memo, including the three sub-issues also identified in Section 2.
4. A hearing is necessary.
5. The schedule for the proceeding is set in "Section 10. Schedule" of this Scoping Memo. The assigned Commissioner or Presiding Officer may adjust this schedule as necessary for efficient management and fair resolution of this proceeding.

6. With limited exceptions that are subject to reporting requirements, *ex parte* communications are prohibited. (See Public Utilities Code Section 1701.3(c); Article 8 of the Commission's Rules of Practice and Procedure.)

7. A party shall submit a request for Final Oral Argument in its opening briefs, but the right to Final Oral Argument ceases to exist if hearing is not needed.

Dated June 16, 2016, at San Francisco, California.

/s/ MICHEL PETER FLORIO

Michel Peter Florio  
Administrative Law Judge